

DOCKET NO. 99-25 ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Creation of Low Power Radio Service)

MM Docket No. 99-25

RM No. 9208

RM No. 9242

To: The Commission

PETITION FOR RECONSIDERATION

Colorado Christian University ("CCU"), by its attorney, pursuant to Section 1.106 of the Commission's rules, respectfully requests reconsideration of one portion of the Commission's *Report and Order*, FCC 00-19, released January 27, 2000 ("Order") in this matter. Specifically, CCU seeks clarification or modification of a provision of the Order and the accompanying rules which would appear to disqualify non-stock entities whose board membership substantially changes in the ordinary course, thereby effecting a change in ownership and control.

In support whereof, the following is respectfully shown:

1. CCU is an accredited university which operates several non-commercial educational broadcast stations and numerous translators. Although, as an existing licensee, Section 73.860 of the new rules renders CCU ineligible for a low power FM ("LPFM") station, student organizations within the university may wish to apply for such facilities

2. CCU respectfully notes that Section 73.865(a)(1) of the new rules bars a transfer of control of an LPFM authorization where there is a substantial change in ownership. Neither the rules nor the Order appear to comment further on this matter.

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3. CCU respectfully notes that the Commission has traditionally treated non-stock entities as being “owned” by the members of their governing boards. See, e.g., Center for Study and Application for Black Economic Development, 8 FCC Rcd. 2116 (1993) at ¶115 and Pacifica Foundation, 41 FCC 2d 71, 72 (Rev Bd 1973) (changes in governing board of non-commercial educational applicant constituted a transfer of control). Indeed, CCU has applied for and received FCC consent when the composition of its governing board, through elections and otherwise, has shifted to the extent that those members previously approved by the Commission no longer constituted a majority.

4. CCU is concerned, though, that the new rules would appear to forbid a transfer of control of this type. This promises to become a problem for many educational organizations, and particularly those comprised of students, whose membership would be expected to change completely over the course of a typical four-year undergraduate cycle.

5. We respectfully note that in 1989 the Commission had launched a Notice of Inquiry to explore this very issue. Transfers of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd. 3403 (1989). However, it appears that the matter was never resolved. More recently, the Commission injected a further element of uncertainty by suggesting that the test for a substantial change of control of a non-stock entity was not “bright-line” and might have to be determined on an *ad hoc* basis. See, FCBA Petition for Forbearance from Section 3.10(b) of the Communications Act, 13 FCC Rcd. 6293 (1998) at ¶¶ 8 and ¶ 9.¹

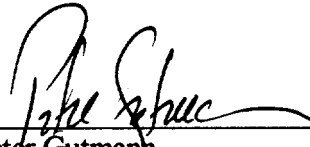
In view of the foregoing, CCU respectfully submits that the stability of the LPFM service

¹ The FCBA decision was specifically limited to certain common carriers. Moreover, while granting the relief the petitioners had sought, the Commission placed a burden upon applicants to determine in the first instance whether a transaction was to be *pro forma* and would comply with appropriate rules. *Id.* at ¶9.

requires that non-stock educational entities, whose boards naturally evolve but continue to reflect the same institutional association, should not be deemed to undergo substantial changes in ownership and control as a function of changing membership of the boards themselves.

Respectfully submitted,

COLORADO CHRISTIAN UNIVERSITY

A handwritten signature in black ink, appearing to read "Peter Gutmann", is written over a horizontal line.

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